

Senate File 445 - Reprinted

SENATE FILE 445
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 241)

(As Amended and Passed by the Senate March 15, 2017)

A BILL FOR

1 An Act relating to law enforcement officers including the
2 establishment of a law enforcement officer privilege and the
3 confidentiality of certain law enforcement officer personnel
4 records.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 22.7, subsection 5, Code 2017, is amended
2 to read as follows:

3 5. Peace officers' investigative reports, privileged
4 records or information specified in section 80G.2, and specific
5 portions of electronic mail and telephone billing records of
6 law enforcement agencies if that information is part of an
7 ongoing investigation, except where disclosure is authorized
8 elsewhere in this Code. However, the date, time, specific
9 location, and immediate facts and circumstances surrounding a
10 crime or incident shall not be kept confidential under this
11 section, except in those unusual circumstances where disclosure
12 would plainly and seriously jeopardize an investigation or pose
13 a clear and present danger to the safety of an individual.
14 Specific portions of electronic mail and telephone billing
15 records may only be kept confidential under **this subsection** if
16 the length of time prescribed for commencement of prosecution
17 or the finding of an indictment or information under the
18 statute of limitations applicable to the crime that is under
19 investigation has not expired.

20 Sec. 2. Section 22.7, subsection 11, paragraph a,
21 unnumbered paragraph 1, Code 2017, is amended to read as
22 follows:

23 Personal information in confidential personnel records
24 of government bodies relating to identified or identifiable
25 individuals who are officials, officers, or employees of the
26 government bodies. However, the following information relating
27 to such individuals contained in personnel records shall be
28 public records, except as otherwise provided in section 80G.3:

29 Sec. 3. NEW SECTION. 80G.1 Definitions.

30 As used in this section except as the context otherwise
31 requires:

32 1. "*Compensation*" means the same as defined in section 22.7,
33 subsection 11.

34 2. "*Law enforcement officer*" means the same as "*peace*
35 *officer*" as defined in section 801.4.

1 3. *“Undercover law enforcement officer”* means a law
2 enforcement officer who is actively involved with and assigned
3 to investigate alleged violations of state or federal law
4 and whose identity as a law enforcement officer is concealed
5 while conducting an investigation. *“Undercover law enforcement*
6 *officer”* includes a law enforcement officer actively engaged
7 in undercover law enforcement work whose assignment requires
8 the law enforcement officer to work incognito, or in a
9 situation in which the true identity of the law enforcement
10 officer is intentionally hidden from others. *“Undercover law*
11 *enforcement officer”* does not include a law enforcement officer
12 participating in undercover law enforcement work that is merely
13 incidental or ancillary to the law enforcement officer’s
14 assigned duties.

15 Sec. 4. NEW SECTION. **80G.2 Law enforcement officer —**
16 **privilege — confidentiality.**

17 1. *a.* A law enforcement officer shall not be examined or
18 be required to give evidence in any criminal proceeding that
19 requires the disclosure of any records or information relating
20 to any of the following:

21 (1) Identification documents or other documents necessary
22 to conduct a lawful undercover criminal investigation.

23 (2) Personal identifying information about the law
24 enforcement officer or immediate family member of the law
25 enforcement officer, or other information unrelated to the law
26 enforcement officer’s professional duties which could be used
27 to threaten, harm, or intimidate the law enforcement officer
28 or immediate family member of the law enforcement officer,
29 or other information that could reasonably be construed to
30 constitute an unwarranted invasion of privacy of the law
31 enforcement officer or immediate family member of the law
32 enforcement officer. Personal information that is knowingly
33 and voluntarily disclosed by the law enforcement officer or
34 immediate family member of the law enforcement officer may be
35 redisseminated.

1 *b.* A law enforcement officer who is called to testify shall
2 not disclose information that is subject to nondisclosure as a
3 result of a court order, statute, contract, or a condition or
4 requirement of a grant.

5 2. In determining whether nondisclosure of confidential
6 or privileged information about a law enforcement officer
7 may affect a defendant's right to present a defense, the
8 court shall make findings on the record regarding the impact
9 of disclosure on the personal safety of the law enforcement
10 officer or immediate family member of the law enforcement
11 officer if the evidence is disclosed, the probative value
12 of the confidential or privileged information about the
13 law enforcement officer, the impact of disclosure on public
14 safety, the potential for partial or limited disclosure of the
15 privileged information, and the defendant's constitutional
16 right to present a defense. Any privileged information that is
17 admitted for purposes of a pretrial hearing or a preliminary
18 admissibility determination shall remain confidential.

19 Sec. 5. NEW SECTION. **80G.3 Personnel information —**
20 **undercover law enforcement officer — confidentiality.**

21 The name, photograph, compensation and benefit records, time
22 records, residential address, or any other personal identifying
23 information of an undercover law enforcement officer shall be
24 confidential while the undercover law enforcement officer is
25 actively involved with or assigned to investigate violations
26 of state or federal law.

27 Sec. 6. NEW SECTION. **80G.4 Court determination.**

28 Factual disputes relating to who is an undercover law
29 enforcement officer or what work constitutes undercover law
30 enforcement work shall be determined by the district court.